(19)

OP/102

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. NO. 4225 /2004

PETITIONER : Jaiprakash Pathak, S/o. Late Vidyadhar, Pathak, Aged about 27 years, R/o. Village Bauripara, Near Temple, P.O. Ambikapur, District Surguja (C.G.)

VERSUS

RESPONDENTS :

1] State of Chhattisgarh, Through: Principle Secretary, (Water Resources Department, Irrigation Department, Secretariat, DKS Bhawan, Raipur (C.G.)

2] State of Madhya Pradesh, Through: Principle Secretary (Water Resources Department, Irrigation Department, Secretariat, Vallabh Bhawan, Bhopal (M.P.)

3] Chief Engineer, Hasdeo Kachhar, (Water Resources Department), Irrigation Department, Bilaspur (C.G.)

4] Superintending Engineer, Shyam Barnai Project, (Water Resources Department) Irrigation Department, P.O. Ambikapur Distt. Surguja (C.G.)

5] Executive Engineer, Barnai Canal Division (Water Resources Department), Irrigation Department, P.O. Ambikapur, Distt. Surguja (C.G.)

P.R. No. 4225/04
Presented by Shri Vinay Bhatt
dated 20/12/04

NOTIFIED COPY
1-11-04
Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

AFR

(110)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4225 of 2004

Petitioner — Jaiprakash Pathak

Versus

Respondent — State of Chhattisgarh & others

Post for order on 20th November, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4225 of 2004

Petitioner Jaiprakash Pathak

Versus

Respondent State of Chhattisgarh & others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri Manoj Paranjpe, Advocate for the petitioner.

Shri A. S. Kachwaha, Government Advocate for the respondents No. 1, 3, 4 and 5.

None for the respondent No.2.

ORDER

(20th November, 2006)

The following order of the Court is passed by Justice **Satish K. Agnihotri**.

1. The present petition filed under Article 226/227 of the Constitution of India seeks a direction to the respondents to consider the case of the petitioner for compassionate appointment. The petitioner had filed a petition in the same nature being W.P.No. 3485/2003, seeking for the same relief i.e. direction to the respondents to consider and grant compassionate appointment on the death of the father of the petitioner late Vidyadhar Pathak.

2. The case of the petitioner is that his father late Vidyadhar Pathak was working with respondents and was posted on the post of supervisor since 22.11.1983 as daily wages employee. He was posted at village Libra in district Sarguja. During the service he died on 8.11.2002 leaving behind all dependent family members who have no source of income. The petitioner is an educated unemployed youth seeking employment on compassionate ground. The petitioner has passed M.A. in Sociology and on the death of his father his mother made an application for compassionate appointment to Chief Engineer, Bilaspur. On the applications of the petitioner the respondent No.3

Chief Engineer, Bilaspur directed the respondent No.4 Superintending Engineer for necessary action and also directed to forward the petitioner's application after completion of all the formalities. The Respondent No.4 in response to the direction of the respondent No.3 forwarded the application of the petitioner for compassionate appointment to respondent No.5, but the respondent No.5 had not taken any action.

3. This Court after having considered the submissions of learned counsel appearing for the parties granted liberty to the petitioner to make a detailed representation to the respondent No.2, therein, for appointment on compassionate basis, while disposing of W. P. No. 3485/2003 on 23.1.2004 (Annexure P/6).

4. The petitioner submitted a representation which was considered by the respondent No.3 and the respondent No.3 by order dated 4.5.2004 dismissed the representation of the petitioner on the ground that the petitioner was daily wages employee and as per clause 3 (1) of the Executive Circular dated 10.6.2003, the petitioner is not entitled to grant of compassionate appointment being dependent of the deceased employee.

5. The petitioner has filed this petition again seeking for the same relief without challenging the correctness and validity of the order dated 4.5.2004 (Annexure P/7) passed by the respondent No.3 Chief Engineer, pursuant to the order dated 23.1.2004 passed by this Court in W. P. No. 3485/2003.

6. By way of this writ petition, the petitioner has urged some other grounds namely, the petitioner was regular employee not a daily wages employee, relying on a letter dated 21.8.1997 (Annexure P/2) of the Deputy Collector, Surguja, addressed to the Chief Engineer, Public Works Department, wherein it was stated that the petitioner may be

considered for regularization in view of the government memo dated 20th June, 1996. It is admitted position that no order to the effect granting regularization to the deceased employee was ever passed.

7. Be that as it may, once the dispute has been raised and adjudicated by this Court, the second petition is not maintainable on the same cause of action seeking for the same relief. This adjudication is barred by the principles of res-judicata.

8. The Supreme Court in the case of **Rajendra Kumar Vs. Kalyan (dead) by Lrs.** {(2000) 8 SCC 99} in paragraphs 14 and 17 held as under:-

> *"14. The doctrine of res judicata has received a statutory sanction in the Code as a matter of prudence and to give due weightage to a finding or a decision so as to reach a finality in the matter of a dispute between the same parties or litigating under the same parties. The doctrine thus is to achieve finality of dispute between the parties being a principle of prudence so asto give efficacy to a finding of the court rather than permit the parties to go to trial more or less on the same issues over again and thus introducing a possibility of conflict of views. Judicial verdict has its special sanctity and cannot be the subject-matter of discussion at any future time involving identical or similar issues. The facts in issue is one where more than one attempt has been made to establish a fact and in every attempt that particular fact stands negated.*
>
> *17. The doctrine of res judicata or constructive res judicata predominantly is a principle of equity, good conscience and justice. It would neither be equitable nor fair nor in accordance with the principles of justice that the issue concluded earlier ought to be permitted to be raised later in a different proceeding. ....."*

9. As a result, for the reasons stated above and in view of the dictum laid down by the Supreme Court, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur